

Appl. No. : 09/840,548  
Filed : April 23, 2001

## REMARKS

The December 17, 2007 Office Action was based on pending Claims 1-9, 11, 13-16, 21-28. Claims 1, 2, 5, 8, 13, 14, 21, 24, and 25 are amended by this paper. Claims 1-9, 11, 13-16, 21-28 remain pending and are presented for further consideration.

The July 6, 2007 Office Action rejects Claims 1-9, 11, 13-16, and 21-28 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,668,857 to McHale in view of Hiett US 6,795,408.

### REJECTION OF CLAIMS 1-9, 11, 13-16 and 21-28 under 35 U.S.C. 103(a)

#### **Claim 1**

The Applicant notes that the claims are amended, for example as in Claims 1, to recite "A method of communicating a message via a computer network, the method comprising:

selecting a target server such that a target transceiver and the target server are located within a same local-toll area of a public switched telephone network connected to the target server and the target transceiver; and

transmitting a message from a first sending server to a the target transceiver via a second the target server wherein the second target server comprises a plurality of outgoing dial-up modems and wherein the outgoing dial-up modems are configured to fax communicate the message to the target transceiver via a the public switched telephone network wherein the second server is selected such that the target transceiver and the second server are located within a same local-toll area of the public switched telephone network;

determining with a processor availability of the outgoing dial-up modems at the second target server;

if none of the outgoing dial-up modems are available, applying a variable wait time wherein a duration of the wait time is applied based at least in part on the utilization of the outgoing dial-up modems;

determining whether at least one of the outgoing dial-up modems is available after the applied wait time; and

sending the message via an available outgoing dial-up modem and the public switched telephone network."

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Similar changes are made to the other base claims 13, 21 and 25.

The Applicant has carefully reviewed the McHale reference and notes that McHale describes a system for providing data service to a number of subscribers and includes a number of XDSL modems where the number of modems is less than a number of twisted pair data lines. McHale further describes over-subscription of data service accomplished by selectively coupling a number of twisted pair data lines to a reduced number of XDSL modems. McHale describes monitoring usage of the modems 160 to determine in a given modem has been inactive for a predetermined interval of time and, if so, generating a timeout and releasing the inactive modem for later subscriber sessions.

The Applicant has carefully reviewed the Hiett reference and notes that Hiett describes techniques for networking multiple users for retrieving data from various data sources via telecommunications methods. Hiett describes use of a wireless LAN, VHF radio signal and/or satellite links particularly for use with mobile data communications such as on aircraft.

However, the Applicant notes that McHale and Hiett in combination fail to teach at least certain aspects of the Applicant's invention as claimed. For example, both McHale and Hiett fail to teach the aspect of selecting a target server such that a target transceiver and the target server are located within a same local-toll area of a public switched telephone network connected to the target server and the target transceiver. McHale and Hiett also fail to teach applying a variable wait time wherein a duration of the wait time is applied based at least in part on the utilization of the outgoing dial-up modems when none of the outgoing dial-up modems are available.

Thus, the Applicant respectfully notes that the combination of McHale and Hiett fail to anticipate each and every aspect of the Applicant's invention as claimed following the amendments of this paper. The Applicant further believes that the ordinary artisan at the time of invention would not have found the Applicant's invention to be obvious considering the teachings of the McHale and Hiett references and considering the nature of the problems addressed and the level of ordinary skill. The Applicant therefore believes that Claim 1 is patentable under the requirements of 35 U.S.C. § 103a in view of McHale and Hiett and respectfully request the rejection be withdrawn.

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**Claims 2-9, and 11**

Claims 2-9, and 11, which depend from Claim 1, are believed to be patentable for the same reasons articulated above with respect to Claim 1, and because of the additional features recited therein.

**Claim 13**

Although Claim 13 has different language than Claim 1, Claim 13 is believed to be patentable for similar reasons as cited above with respect to Claim 1 as currently amended and because of the different features recited therein.

**Claims 14-16**

Claims 14-16, which depend from Claim 13, are believed to be patentable for the same reasons articulated above with respect to Claim 13, and because of the additional features recited therein.

**Claim 21**

Although Claim 21 has different language than Claim 1, Claim 21 is believed to be patentable for similar reasons as cited above with respect to Claim 1 as currently amended and because of the different features recited therein.

**Claims 22-24**

Claims 22-24, which depend from Claim 21, are believed to be patentable for the same reasons articulated above with respect to Claim 21, and because of the additional features recited therein.

**Claim 25**

Although Claim 25 has different language than Claim 1, Claim 25 is believed to be patentable for similar reasons as cited above with respect to Claim 1 as currently amended and because of the different features recited therein.

**Claims 26-28**

Claims 26-28, which depend from Claim 25, are believed to be patentable for the same reasons articulated above with respect to Claim 25, and because of the additional features recited therein.

The Applicant respectfully requests that the rejection of Claims 1-9, 11, 13-16, and 21-28 under 35 U.S.C. 103(a) be withdrawn.

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No Disclaimers or Disavowals

Although the present communication includes alterations to the claims and characterizations of claim scope and referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

The claims of the present application are different and possibly broader in scope than the claims as originally filed. To the extent any prior amendments or characterizations of the scope of any claim or referenced art could be construed as a disclaimer of any subject matter supported by the present disclosure, the Applicant hereby rescinds and retracts such disclaimer. Accordingly, the references previously considered in the application may need to be re-visited.

Co-Pending Applications of Assignee

Applicant wishes to draw to the Examiner's attention to the following co-pending applications of the present application's assignee.

Serial Number	Title	Filed
11/496,705	METHOD AND SYSTEM FOR FACSIMILE DELIVERY USING DIAL-UP MODEM POOLS	7/31/2006

Copies of the patents, applications, and pending claims, including any office actions, Applicants' responses, and notices of allowance, are available through PAIR. However, if the Examiner so requests, Applicant will be happy to provide the Examiner with copies of any patents, applications, pending claims, office actions, allowances, or any other documents, at any time.

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**SUMMARY**

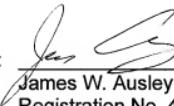
In view of the foregoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Examiner is cordially invited to contact the undersigned such that any remaining issues may be promptly resolved.

Also, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: April 17, 2008

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